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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/644,264 | 08/20/2003 | Vadim Bluvshteyn | MSFT125549 | 7483 |

| 38991    7590    01/12/2007 | EXAMINER |
|---|---|
| CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC <br> 1420 FIFTH AVENUE <br> SUITE 2800 <br> SEATTLE, WA 98101-2347 | RAYYAN, SUSAN F |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2167 | |

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
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| 3 MONTHS | 01/12/2007 | PAPER |

## Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | Application No. | Applicant(s) |
|---|---|---|
| **Office Action Summary** | 10/644,264 | BLUVSHTEYN ET AL. |
| | Examiner | Art Unit | |
| | Susan F. Rayyan | 2167 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *03 October 2006*.

2a)☒ This action is **FINAL**.      2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-10 and 21-30* is/are pending in the application.

     4a) Of the above claim(s) *11-13, 15-16, 18-20, 38-39* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10 and 21-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a)☐ All    b)☐ Some * c)☐ None of:

         1.☐ Certified copies of the priority documents have been received.

         2.☐ Certified copies of the priority documents have been received in Application No. _____.

         3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

*12/21/06*

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

### *Election/Restrictions*

1.      Claims 11-13,15-16,18-20,38-39 are withdrawn from further consideration

pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no

allowable generic or linking claim. Election was made **without** traverse in the reply filed

on October 3, 2006.

### *Response to Arguments*

2.      Applicant's arguments filed on June 29, 2006 with respect to claims 1-10, 21-30

have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues McCaleb does not disclose generating a log file that contains

information about installed applications or provided services. Nor does McCaleb

disclose employing a subset of attributes associated with such applications or services

to generate a signature representing the subset. Examiner finds McCaleb does disclose

generating a log file that contains information about installed applications or provided

services (column 4 lines 20-24, as a client database (log file) that includes information

on software packages on the client system, the operating systems ... ).

McCaleb also discloses employing a subset of attributes associated with such

applications or services to generate a signature representing the subset (column 5, lines

28-30, a version of each software package is collected equates to attributes associated

with application s which equates to a signature).

## DETAILED ACTION

3.      Claims 11-20, 31-39 are withdrawn.

4.      Claims 14,17,31-37 have been canceled.

5.      Claims 1-10, 21-30 are pending.

### *Claim Rejections - 35. USC § 101*

6.      35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 21,25-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

To be statutory, a claimed computer-related process must either: (A) result in a physical transformation outside the computer for which a practical application is either disclosed in the specification or would have been known to a skilled artisan, or (B) be limited to a practical application with useful, concrete and tangible result.

A practical application can be either physical transformation or a useful, concrete and **tangible** result.

Claims 21,23,25-30 enumerate executables associated with application programs and services provided by the computer, extract information about the executable and derive a signature for the combined set of attributes. The claim does not provide a tangible result (real world result) such as storing the signature in a manner similar to claim 22.

As per claim 21 recites "enumerating executables associated with each application on and each service provided by the computer that has an associated executable", "for each executable, extracting information about the executable, the information including a plurality of attributes regarding the executable" and "deriving a signature for a combined set of attributes including from each of the executables". The claims do not provide a tangible result such as storing the signature.

## Claim Rejections - 35 USC § 102

7.     The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1,5-9,21,25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Jed McCaleb et al (US 6,751,794).**

As per claim 1 McCaleb anticipates:

computer implemented method of collecting and storing information about the

programs installed on and the services provided by a computer for

subsequent retrieval (column 3, lines 60-65, client database tracks the

installed software of the client system), comprising:

extracting from the computer system information including, but not limited to,

information about the computer operating system, hardware, and processor and storing

the system information in a log file (column 4 lines 20-24, as a client database (log file)

that includes information on software packages on the client system, the operating

systems ... and col.4, lines 31-36 and col.5, lines 11-16, extracting

information such as version information. Customer database storing hardware

information);

extracting from the computer executables information including, but not

limited to, information about executables included in a defined set of folders stored on

the computer and executables associated with services provided by the computer and

storing the executables information in the log file, the executables information including

attributes determined by the executables and extracting from the computer information

regarding the application programs installed on the computer including linked

executables and storing the application program information in the log file, the

application program information including attributes determined by the application

programs including the linked executables (column 7-24, column 6, 50-56, collects

information on the applications (executables and linked executables) on the client

including the application version information, wherein the version number collected

equates to an attribute of an application. The information is stored on the client

database which equates to the log file);

deriving a signature for each of the executables based on a subset of the

attributes associated with the executable and storing the resultant signatures in the

log file (column 7-24, column 6, 50-56, collect information on the applications on the

client including the application version information, wherein the version number

collected equates to an attribute of an application which equates to a signature of the

application (executable). The information is stored on the client database (applicants'

log file)).


As per claim 21, McCaleb anticipates a computer implemented method of collecting and

storing information about the applications installed on and the services provided by a

computer for subsequent retrieval (column 3, lines 60-65, client database tracks the

installed software of the client system);

enumerating executables associated with each application on and each service

provided by the computer that has an associated executable and

for each executable , extracting information about the executable , the information

including a plurality of attributes regarding the executable(column 7-24, column 6, 50-

56, collects information on the applications (executables)on the client including the

application version information, wherein the version number collected equates to

information about the executable);

and deriving a signature for a combined set of attributes including from each of the

executables (column 7-24, column 6, 50-56, collect information on the applications on

the client including the application version information, wherein the version number

collected equates to an attribute of an application which equates to a signature of the

application (executable))

As per claim 5 same as claim arguments above and McCaleb anticipates:

wherein extracting application program information comprises accessing an installer

component of the computer (col.4, lines 45 to column 5, lines 10, installer program

equates to the patch checker which sends requests for a self-check to collect

information on pertinent information associated with applications on the client system) .

As per claim 6 same as claim arguments above and McCaleb anticipates:

wherein the application program information is stored in connection with the installer

component at col.6, lines 49-57, client database stores application information

installed by the patch checker).

As per claim 7 same as claim arguments above and McCaleb anticipates:

wherein extracting the application program information comprises accessing more than

one information source for the information ( col.4 lines 65 to column 5, line 10, extracting

file version , keyname , filename).

As per claim 8 same as claim arguments above and McCaleb anticipates:

further comprising choosing a best source of the more than one information, and

utilizing that best source to provide at least some of the application program information

( column 5, line 28-30, in one embodiment  version of each software part is collected).


As per claim 9 same as claim arguments above and McCaleb anticipates:

further comprising storing information about the sources other than the best source with

the program application information at col.3, lines 60 through col. 4, line 2, client

database).

Claims 25-29 are rejected under the same rationale as claims 5-9 arguments .


### Claim Rejections - 35 USC § 103

8.     The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9.     This application currently names joint inventors.  In considering patentability of

the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary.  Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g)

prior art under 35 U.S.C. 103(a).

10.    **Claims 2-4,22-24, are rejected under 35 U.S.C. 103(a) as being unpatentable**

**over McCaleb et al (US 6,751,794) in view of Wong et al (US 2003/0090531).**

As per claims 2-4 same as claim arguments above and McCaleb teaches storing

signatures ... associated with the executables (column 5, lines 20-23, 33-35, collect

version number (signature) . McCaleb does not explicitly teach storing ... in an XML file.

Wong does teach this limitation at parg.137 to standardize and simplify the task of

transferring data file from one type of computer system of software to another. It would

have been obvious to one of ordinary skill in the art at the time of the invention to

combine the cited references to standardize and simplify the task of transferring data file

from one type of computer system of software to another at parg. 136, lines 7-8.

Claims 22-24 are rejected under the same rationale as claim 2-4 arguments.

11.    **Claims 10, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable**

**over McCaleb et al (US 6,751,794) and Kidder et al (US 004/0031030).**

As per claims 10,30 same as claim arguments above and McCaleb does not explicitly

teach wherein deriving a signature comprises generating a number from the subset

utilizing a cyclic redundancy check Kidder does teach this limitation to prevent errors and potential network device crashes due to applications not being upgraded. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify McCaleb with deriving a signature comprises generating a number from the subset utilizing a cyclic redundancy check to prevent errors and potential network device crashes due to applications not being upgraded (paragraph 458, lines 4-6).

### *Conclusion*

12.    Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

## Contact Information

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Rayyan whose telephone number is (571) 272-1675. The examiner can normally be reached M-F: 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cottingham can be reached on (571) 272-7079. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Susan Rayyan

December 21, 2006

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